

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA, Case No.: 3:15CR24

Plaintiff, September 21, 2020

v

ANA ANGELICA PEDRO JUAN,

Defendant.

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TRANSCRIPT OF MOTION HEARING VIA ZOOM  
BEFORE THE HONORABLE JAMES G. CARR  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On behalf of the plaintiff:

Chelsea S. Rice  
Office of the U.S. Attorney  
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On behalf of the defendant:

Claire R. Cahoon  
Matthew J. Ahn  
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Court Reporter:

Angela Nixon, RMR, CRR  
Official Court Reporter  
United States District Court  
(419) 213-5518

1           COURTROOM DEPUTY: The Court is now in session  
2 before the Honorable James G. Carr, Judge of the United  
3 States District Court. The case before The Court is USA  
4 versus and Ana Angelica Pedro Juan, case number 3:15CR24.  
5 The matter is called for a motion hearing on a 2255  
6 petition. Government represented by Chelsea Rice.  
7 Defendant represented by Claire Cahoon and Matthew Ahn. We  
8 also have Ana Lahr here from Interpreter Services.

9           THE COURT: Tina, will you please swear the  
10 witness -- or the defendant to tell the truth, the whole  
11 truth and nothing but the truth?

12                     (Whereupon the defendant, Ana Angelica Pedro  
13 Juan, was sworn in on the record.)

14           INTERPRETOR: I do swear.

15           THE COURT: Counsel for the defendant petitioner,  
16 do you have a few brief remarks to frame today's  
17 proceeding?

18           MS. CAHOON: I do. Thank you, Your Honor. Just  
19 very briefly because I'll leave the job of summing all this  
20 up to Mr. Ahn to present argument at the close of our  
21 hearing today. But I want to provide a little bit of  
22 context to The Court about what this case is and is not  
23 about.

24                     This case is not about the allegations which  
25 Ms. Pedro Juan has already admitted. Rather, this case is

1 about particularly access to The Court in imposing  
2 convictions for individuals who are nonnative English  
3 speakers, and also about the failure to present in  
4 mitigation as being ineffective assistance of counsel. And  
5 with that little bit of framing, I'll defer our remarks  
6 until after we complete our witnesses. Thank you.

7 THE COURT: Ms. Rice, anything that you wish to  
8 state, likewise briefly, before the first witness is  
9 called?

10 MS. RICE: Thank you, Your Honor. Briefly,  
11 first, Ms. Pedro Juan is time barred from bringing this  
12 motion before The Court as outlined in our response and  
13 will be further outlined today.

14 Second, should this Court find that she is  
15 granted equitable tolling, which the government believes  
16 she is not, Mr. Dech performed competently and she can not  
17 establish either prong of (unintelligible).

18 INTERPRETOR: Your Honor, the interpreter is  
19 having trouble hearing Ms. Rice, if Ms. Rice could please  
20 repeat her last statement.

21 MS. RICE: Thank you. Even if this Court finds  
22 that Ms. Pedro Juan is granted equitable tolling, which the  
23 government believes she is not, she can not establish  
24 either (unintelligible).

25 INTERPRETOR: She can not establish either prong

1 of?

2 MS. RICE: The Strickland test, as Mr. Dech  
3 performed both competently. And she can not meet her  
4 burden of showing actual prejudice even if she shows he  
5 acted below a standard of reasonableness.

6 THE COURT: Okay. And then let me ask the  
7 interpreter, have you been sworn -- previously sworn to --  
8 to translate faithfully statements made in English into  
9 Spanish, and statements made in Spanish into English?

10 INTERPRETOR: Yes, Your Honor, the interpreter  
11 has been dually sworn.

12 THE COURT: Okay. And I apologize if any of us  
13 interrupt because we are accustomed to having simultaneous  
14 translation, so thank you for the job that you're doing.

15 INTERPRETOR: You're welcome, Your Honor.

16 THE COURT: Ms. Cahoon, you may proceed to call  
17 your first witness.

18 MS. CAHOON: Thank you very much, Your Honor.  
19 The defense petitioner would call Ms. Pedro Juan.

20 COURTROOM DEPUTY: She's already been sworn.

21 DIRECT EXAMINATION

22 BY MS. CAHOON:

23 Q. Good afternoon, Ms. Pedro Juan.

24 A. Good afternoon.

25 Q. Are you able to see and hear me okay?

1 A. Yes.

2 Q. Very good. Could you please state your full name  
3 for the record?

4 A. Ana Angelica Pedro Juan.

5 Q. And Ms. Pedro Juan, where are you from  
6 originally?

7 A. Guatemala.

8 Q. And what is your native language?

9 A. Q' anjob' al. It's a dialect.

10 Q. Thank you. Do you speak Spanish at all?

11 A. Yes, but there are words that I cannot  
12 understand.

13 Q. So would it be fair to say that you speak your  
14 native language a little bit better than you speak Spanish?

15 A. Yes.

16 Q. And do you speak any English as we are here  
17 today?

18 A. Yes.

19 Q. So I'd like to take you back to when this case  
20 originally started.

21 When you were preparing your plea and sentencing  
22 back in 2015, did you speak any English at that point?

23 A. Nothing.

24 Q. You spoke no English at all?

25 A. Nothing.

1 Q. What about your Spanish at that time? When your  
2 case was going forward with the plea of guilty and  
3 sentencing, how strong were your Spanish skills?

4 A. About 60 percent.

5 Q. Were you ever, during the course of your case,  
6 able to communicate with your attorney with an interpreter  
7 who spoke your native dialect?

8 A. No.

9 Q. How would your attorney communicate to you, in  
10 what language?

11 A. Spanish.

12 Q. And was that with the use of an interpreter, or  
13 did Mr. Dech speak Spanish?

14 A. The interpreter.

15 Q. And I want to make sure I understand your earlier  
16 answer correctly. When you said 60 percent, do you mean  
17 you understood about 60 percent of what was said, or did  
18 you mean something different?

19 A. Yes, I understood that much.

20 Q. When Mr. Dech was assisting you with your  
21 defense, did he review the written plea agreement with you  
22 before you had your court hearing?

23 A. I think he showed me some papers, but they were  
24 in English and I could not read them.

25 THE COURT: Excuse me, may I interrupt?

1 MS. CAHOON: Of course.

2 THE COURT: Is this challenge to the plea,  
3 sentencing or which, or both?

4 MS. CAHOON: Your Honor, this is purely a  
5 challenge to the mitigation presented at sentencing;  
6 however, the advisement about the plea is relevant because  
7 Ms. Rice argued in her response that there was an  
8 advisement about habeas in that plea that should have given  
9 her notice regarding equitable tolling.

10 THE COURT: Thank you. That was -- I asked that  
11 question simply to confirm my understanding.

12 MS. CAHOON: Thank you, Your Honor. I appreciate  
13 that.

14 BY MS. CAHOON:

15 Q. So when you were discussing the plea agreement  
16 with your previous defense lawyer, did he ever talk to you  
17 about a statute entitled 28 U.S.C. 2255?

18 A. I don't remember.

19 Q. You remember him ever discussing the concept of a  
20 habeas with you when he was representing you?

21 A. I don't remember.

22 Q. When you say I don't remember, do you mean that  
23 you don't recall if the answer is yes or no, or do you mean  
24 something different?

25 A. I think it was a no.

1 Q. Okay. So just to clarify, do you believe that  
2 Mr. Dech reviewed the concept of a habeas petition with you  
3 during his representation?

4 A. No.

5 THE COURT: Excuse me. I would suggest that you  
6 ask if she has a present understanding of the term habeas  
7 corpus because I think that's important that we --  
8 important thing to take into account. And you may want to  
9 ask questions after that.

10 MS. CAHOON: Indeed, Your Honor. Thank you, Your  
11 Honor. I appreciate that direction, and I am preparing to  
12 do that and lay out the timeline.

13 THE COURT: That's fine.

14 BY MS. RICE:

15 Q. Ms. Pedro Juan, since the time of your plea and  
16 sentencing, did you come to understand that there was such  
17 a thing as a habeas petition and get a greater  
18 understanding of how it might be able to help you?

19 A. I don't understand what that is.

20 Q. Let me ask a better question. I think that was  
21 probably confusing. After you began serving your prison  
22 term, did you ever hear about the concept of a habeas  
23 petition while you were serving your sentence?

24 A. Once I got to the prison, yes.

25 Q. Okay. And where did you hear about habeas



1 petitions while you were serving your sentence?

2 A. Through another inmate towards the end of 2017.

3 Q. So when you first began serving your prison  
4 sentence before 2017, did you speak any English at that  
5 time?

6 A. No.

7 Q. Did you ever attempt to use the law library  
8 during that time to learn more about challenges that you  
9 could make in your case?

10 A. Yes, but everything was in English.

11 Q. So you just told us that in 2017 another inmate  
12 mentioned the concept of habeas to you. What was your  
13 understanding at that point of what a habeas petition was?

14 A. She was saying that she was taking some papers to  
15 The Judge so that he would help her with her time because  
16 there had been a mistake in her case and that would help  
17 her.

18 Q. And did that make you --

19 A. And that name of that was the petition.

20 THE COURT: Ms. Cahoon, you've been leading the  
21 witness almost exclusively, okay. And as a general rule  
22 I'm not very tolerant towards that. Okay, I know there's  
23 no objection from the prosecutor. May I suggest that you  
24 might be better advised what was your reaction to that,  
25 what did you do then, to whom did you speak, that sort of

1     thing. I think it will go more quickly, and I'll get the  
2     gist of her answers just as well. Okay.

3             MS. CAHOON: Thank you, Your Honor.

4             THE COURT: The interpreter may continue.

5             MS. CAHOON: Thank you, Your Honor.

6             THE COURT: And I should say, it's your case,  
7     it's your witness. I don't intend to keep interrupting.  
8     Just by way of general observation, okay. You may  
9     continue.

10            MS. CAHOON: Thank you, Your Honor. I appreciate  
11     that direction.

12     BY MS. CAHOON:

13     Q.           Ms. Juan Pedro, after you learned about habeas  
14     from other inmates, what did you do next?

15     A.           I continued to go to English school so that I  
16     could learn more English so I could communicate with more  
17     inmates.

18     Q.           And did you end up communicating with more  
19     inmates in English as your skills improved?

20     A.           Yes.

21     Q.           What did you do next to pursue habeas?

22     A.           So I found out that a lot of people would do  
23     paperwork for other inmates, but they would charge money so  
24     I wouldn't say anything about my case then.

25     Q.           So at that point, what did you do next?

1 A. So I continued to go to school, and I could speak  
2 more English, and I tried to go to the library to look for  
3 books about the law, but everything was too much English.

4 Q. How were you able to put together the petition  
5 that you ultimately filed pro se?

6 A. So towards the end of 2018 a lady came to live  
7 with me, another inmate, and she told me that she was doing  
8 some paperwork for another inmate. And I asked her how she  
9 would do that, and she said all you needed was some  
10 paperwork from The Court.

11 Q. And what did you do when you learned that?

12 A. So at first she said that she charged. And so  
13 eventually I trusted her because I wouldn't just trust  
14 anybody, so at the beginning of 2019 I gave her the form  
15 for her to help me out, and she didn't charge.

16 Q. Why wouldn't you trust just anyone to handle your  
17 habeas petition for you?

18 A. Because sometimes I would hear that sometimes  
19 they would not fill out the paperwork correctly and they  
20 would ruin the case. And since I couldn't do it myself, I  
21 had to have somebody else do it, so I couldn't just trust  
22 anybody.

23 Q. Why didn't you feel that you could do it  
24 yourself?

25 A. Because I couldn't write well in English or read

1 the questions in order to fill out the form.

2 Q. Did you ever file any other kind of sentencing  
3 relief before that habeas petition?

4 A. So I know when I first got to the jail I didn't  
5 speak any English, and a woman told me they could file some  
6 paperwork for me. And I know that somebody put in some  
7 papers for me, but I don't know what they were.

8 Q. So you did not actually -- well, so did you  
9 prepare any of that paperwork yourself?

10 A. No, they did everything.

11 MS. CAHOON: I think I have no further questions.  
12 Thank you, Your Honor.

13 THE COURT: I do have one question for the  
14 interpreter.

15 INTERPRETOR: Yes, Your Honor.

16 THE COURT: When I asked -- strike that. In what  
17 language have you been translating from and to and to and  
18 from?

19 INTERPRETOR: Spanish to English and English to  
20 Spanish, Your Honor.

21 THE COURT: Okay. Ms. Rice, you may proceed, or  
22 you can take a couple minutes, if you want, to prepare your  
23 cross-examination.

24 MS. RICE: Thank you, Your Honor. To make sure  
25 we all have access to the documents, I'm going to be

1     referencing document number 85, the plea agreement, and  
2     document number 114, the presentence investigation report,  
3     document 131, the sentencing transcript, and document 134,  
4     Ms. Pedro Juan's motion for modification of sentence.

5                                 CROSS-EXAMINATION

6     BY MS. RICE:

7     Q.             Good afternoon, Ms. Pedro Juan.

8     A.             Good afternoon.

9     Q.             You were represented by Mr. Merl Dech in the  
10    trial court in front of Judge Carr, correct?

11    A.             Yes.

12    Q.             And as part of that case, you entered into a plea  
13    agreement with the government, correct?

14    A.             Yes.

15    Q.             And as part of that plea agreement, you admitted  
16    to your role in the forced labor conspiracy, correct?

17    A.             Yes.

18    Q.             And you also admitted to lying to law  
19    enforcement, correct?

20                    MS. CAHOON:  Objection.

21                    THE COURT:  Basis?

22                    MS. CAHOON:  This is outside the scope of direct,  
23    Your Honor.

24                    THE COURT:  Seems correct to me, Ms. Rice.  How  
25    is it within the scope?

1 MS. RICE: Your Honor, it's going to the  
2 credibility of the --

3 THE COURT: Time out. Let the --

4 MS. RICE: Your Honor, it's going to the  
5 credibility of the witness.

6 THE COURT: Ms. Cahoon?

7 MS. CAHOON: Well, considering that there was an  
8 enhancement for obstruction, which Ms. Pedro Juan pled to  
9 as a part of her agreement, I don't know that we need to  
10 have that addressed as credibility. It's already something  
11 she's admitted.

12 THE COURT: Yeah, I agree that she would be  
13 judicially estopped from deviating from that. Although --  
14 although, she has raised the contention that she didn't  
15 review the plea agreement, as I understand it, in Spanish  
16 so perhaps it's not estopped.

17 MS. CAHOON: And Your Honor, if I may, I believe  
18 Ms. Pedro Juan's testimony was Mr. Dech explained the plea  
19 agreement's contents with her, but she was not provided  
20 with the Spanish language (unintelligible).

21 THE COURT: There's a difference between  
22 something being explained and something being read to the  
23 defendant in Spanish. And what does the record show with  
24 regard to my asking or determining that the plea agreement  
25 had been translated from English into Spanish?

1 MS. RICE: Your Honor, I do not have the  
2 transcript from the plea hearing. I do have it from the  
3 sentencing hearing.

4 THE COURT: It's my custom and practice, I don't  
5 think I deviated from it in this case, to confirm when  
6 there's a nonnative speaker of English to ask the  
7 interpreter in the presence of the defendant while under  
8 oath whether she translated the plea agreement from English  
9 into Spanish for the defendant. If I overlooked that, then  
10 -- then it would seem to me that it's appropriate to have  
11 her answer the question that Ms. Rice posed so that the  
12 record shows one way or another what her response was to  
13 that charge and now to the question that reframes that  
14 charge.

15 And I will ask the interpreter to ask the  
16 defendant if she recalls the question that started this  
17 long conversation off. It can be asked again.

18 INTERPRETOR: Ms. Rice, would you like to repeat  
19 the question, or would you like --

20 MS. RICE: I can ask it again. I thought we were  
21 waiting on our response from Ms. Pedro Juan. Apologize.  
22 For sake of (Interruption in Zoom audio).

23 THE COURT REPORTER: Excuse me, I'm only hearing  
24 part of what you're saying. I'm getting some background  
25 noise on your end. You're very faint.

1           THE COURT: And I agree, you've been a bit  
2 muffled there. Let's let the interpreter translate --

3           MS. RICE: Thank you, Your Honor. And I  
4 apologize. I hope this is better.

5           THE COURT: Why don't you just reask the  
6 question.

7 BY MS. RICE:

8 Q.           Ms. Pedro Juan, do you recall having an  
9 interpreter present at your change of plea hearing in front  
10 of Judge Carr?

11 A.           Yes.

12 Q.           And at that hearing, did you indicate to The  
13 Court you had reviewed the plea agreement with your  
14 attorney?

15 A.           I don't remember.

16           MS. RICE: Is this any better?

17 A.           Yes.

18 Q.           All right. Ms. Pedro Juan, you would -- to  
19 clarify, you don't recall whether you reviewed the plea  
20 agreement at the change of plea hearing?

21 A.           No.

22           THE COURT: Ms. Rice, may I interrupt?

23           MS. RICE: Yes, Your Honor.

24           THE COURT: I believe the question was you  
25 admitted lying to the FBI, to law enforcement, or words to



1     that effect. That was the question that triggered the  
2     objection and then the long colloquy, and I overruled the  
3     question and said you could ask that question. Do you want  
4     that question or not?

5                 MS. RICE: Thank you, Your Honor.

6     BY MS. RICE:

7     Q.           Ms. Pedro Juan, on Page 12 of your plea  
8     agreement, you admitted to knowingly making numerous false  
9     statements to the FBI, correct?

10    A.           Yes.

11    Q.           And you initialed all 15 pages of your plea  
12    agreement, correct?

13    A.           Yes.

14    Q.           And you signed on the last page saying that you  
15    have read or had the plea agreement read to you in its  
16    entirety, correct?

17    A.           Yes.

18    Q.           And that plea agreement was reviewed with an  
19    interpreter, correct?

20    A.           Yes, but I don't remember if they read all the  
21    papers.

22    Q.           So you signed on the last page saying all pages  
23    were reviewed by you even though that was not correct?

24                 MS. CAHOON: Objection.

25                 THE COURT: Basis?

1 MS. CAHOON: With all due respect to Ms. Rice, I  
2 believe she's characterizing what my client is saying.

3 THE COURT: Why don't you reframe it. Rephrase  
4 the question, please.

5 MS. RICE: Thank you, Your Honor.

6 BY MS. RICE:

7 Q. Did you read or have read to you the entire plea  
8 agreement?

9 A. I know that he said that there were 15 pages, I  
10 don't remember if they read the whole thing. I did not  
11 read it myself because I can not read English.

12 Q. But you had it read to you with an interpreter,  
13 correct?

14 A. I know that they read some things but not all.

15 THE COURT: And who read it to her, and was it in  
16 Spanish?

17 A. The interpreter.

18 MS. RICE: Thank you, Your Honor.

19 BY MS. RICE:

20 Q. When you appeared for sentencing in front of  
21 Judge Carr, there was an interpreter present for that  
22 hearing, correct?

23 A. Yes.

24 Q. And at that hearing you, again, indicated that  
25 you had met with your attorney and reviewed the Presentence

1 Report, correct?

2 A. Yes.

3 Q. In June of 2016, you filed a motion before this  
4 court, do you recall that?

5 A. Yes, and that's what I said in the beginning that  
6 I didn't know what that was about.

7 Q. For the record, I'm referring to document number  
8 134. Ms. Pedro Juan, you would agree that you signed that  
9 document, correct?

10 A. Yes. When they said it was prepared I didn't  
11 know what it was about, and I had just gotten to the prison  
12 when I signed it.

13 Q. You didn't review it at all before it was filed  
14 with The Court?

15 A. No.

16 Q. How did the person who filed it get the specific  
17 information about your case?

18 A. So when you just get to the prison they give you  
19 a paper and they give you a case manager, and I remember  
20 that I showed them a paper.

21 Q. Okay. I just want to make sure I understand,  
22 Ms. Pedro Juan. So it's your testimony that you did not  
23 review this document at all before it was filed?

24 A. No.

25 Q. No. Are you aware that that document was filed

1 in English?

2 A. No, I don't remember if it was in English. I do  
3 know that when they replied, all the paperwork was in  
4 English.

5 Q. And you were notified that that motion was  
6 denied, correct?

7 A. Yes.

8 Q. In June of 2016, you were communicating with  
9 people about potential legal remedies for your sentence,  
10 correct?

11 A. Yes, but they didn't explain it to me like that.

12 Q. And in June of 2017, did you learn that your  
13 motion had been denied?

14 A. Yes.

15 Q. Who did you learn that from?

16 A. When you go to the library there are people who  
17 have their names and numbers on the computers, and so I was  
18 just learning English, and when I went there, there was a  
19 girl sitting there who asked me if I had filed some kind of  
20 motion because it appeared that it had been denied.

21 Q. So in June 2017 you were speaking with people in  
22 the legal -- the prison library about filing motions with  
23 The Court?

24 A. No, she didn't say anything about that. She  
25 didn't explain what a motion is or anything like that. She

1 just asked me if I had sent some papers to The Judge.

2 Q. My earlier question was who -- is this the same  
3 person who gave you the order denying your first motion?

4 A. No, it was a different one.

5 Q. Okay. So just to -- to finish up here, in  
6 June -- or excuse me, September of 2016, you signed a  
7 filing that was submitted to The Court, correct?

8 A. I don't remember.

9 MS. RICE: Well, I would ask to show document  
10 134, so for purposes of the record, I will proffer in  
11 document number 134.

12 THE COURT: And what is it? Excuse me. What is  
13 it again? The plea agreement?

14 MS. RICE: Your Honor, it is Ms. Pedro Juan's pro  
15 se motion for modification of sentence.

16 THE COURT: Okay. Be admitted. It's already  
17 part of the record. You've referred to a motion being  
18 denied. When and what was that?

19 MS. RICE: Your Honor, that was your order on the  
20 pro se motion for reduction of sentence.

21 BY MS. RICE:

22 Q. Ms. Pedro Juan, in February of 2019 you filed  
23 your first 2255 motion, correct?

24 A. Yes.

25 Q. And as part of that filing, which is document

1 176, you referenced the earlier motion for reduction of  
2 sentence, correct?

3 A. I don't remember.

4 Q. Who wrote the motion that was filed in February  
5 of 2019?

6 A. An inmate that lived with me.

7 Q. And finally, in March of -- I'm sorry, September  
8 of 2016, there -- you lived with other inmates, correct?

9 A. Yes.

10 Q. And you had access to the law library at that  
11 time as well, correct?

12 A. Yes.

13 MS. RICE: Your Honor, I have nothing further at  
14 this time. Thank you.

15 THE COURT: Okay. Ms. Cahoon, redirect?

16 REDIRECT EXAMINATION

17 BY MS. CAHOON:

18 Q. Ms. Pedro Juan, you told us earlier that you had  
19 been looking for another inmate that you felt you could  
20 trust to assist with filing your habeas petition. Why did  
21 it take so long to find an inmate you thought you could  
22 trust to assist you?

23 A. First of all, I couldn't speak English well, and  
24 all the ones who could help either spoke English or would  
25 charge money, and I had no money to be able to pay anyone.

1 Q. Why didn't you simply find a lawyer to assist you  
2 at that time?

3 A. Because I didn't have any money to have an  
4 attorney.

5 MS. CAHOON: Thank you, Your Honor. I don't have  
6 any other questions for this witness.

7 THE COURT: Okay. Recross?

8 MS. RICE: No, Your Honor.

9 THE COURT: Further witnesses for the petitioner?

10 MS. CAHOON: Thank you, Your Honor. We do not  
11 have any additional witnesses. Petitioner would rest  
12 pending argument at the close of this hearing.

13 THE COURT: Ms. Rice, you have witnesses?

14 MS. RICE: No witnesses for the government, Your  
15 Honor. I'd proffer in the record from the case.

16 THE COURT: Okay. And what do you propose by way  
17 of supplemental briefing, if anything, or do you wish to  
18 rest on the briefs previously submitted? Ms. Cahoon?

19 MS. CAHOON: Your Honor, I believe the --

20 THE COURT: Let me back up -- or do you want to  
21 take a few minutes to think about that and perhaps consult  
22 with Mr. Ahn?

23 MS. CAHOON: Thank you, Your Honor. As in all  
24 things, Mr. Ahn is smarter than me, so if The Court will  
25 indulge me for 30 seconds so I can consult with him?

1           THE COURT: Why don't we put you in a breakout  
2 room. Do you have Melissa's phone number, or can you text  
3 her?

4           MS. CAHOON: I can shoot her an email, but I  
5 think actually we should be able to leave the breakout room  
6 ourselves.

7           THE COURT: Go ahead. Take whatever time you  
8 want.

9                   (A brief recess was taken.)

10          MS. CAHOON: Thank you, Your Honor. We're ready  
11 to go back on the record.

12          THE COURT: Okay.

13          MS. CAHOON: Thank you, Your Honor. I believe  
14 The Court was asking if there was a need for post-hearing  
15 briefing, and Mr. Ahn and I have consulted, and we think  
16 that we'll just have a brief closing argument today, and we  
17 don't believe there will be a need for briefing.

18          THE COURT: Ms. Rice, do you want to submit a  
19 supplemental brief, or would you be prepared to argue this  
20 afternoon?

21          MS. DYBALA: Chelsea, you are muted.

22          MS. RICE: Sorry. Your Honor, given the lack of  
23 clarity regarding whether the full plea agreement was  
24 reviewed with Ms. Pedro Juan, I would ask for time to order  
25 the change of plea transcript and submit supplemental



1 briefing as to that.

2 THE COURT: Okay. If you could perhaps put the  
3 interpreter and the defendant petitioner into a breakout  
4 room, please.

5 MS. DYBALA: How about a waiting room?

6 THE COURT: A waiting room is fine. Doesn't  
7 matter.

8 (Defendant and interpreter in waiting room.)

9 MS. DYBALA: Okay, Judge, they are both in a  
10 waiting room.

11 THE COURT: Okay. Yeah, candidly I'm a little  
12 surprised that neither of you have called the interpreter  
13 who handled the proceeding. I think it would be important  
14 to know from the interpreter whether or not, if she recalls  
15 the proceeding, she had any problems or difficulty  
16 communicating with the defendant. But that's -- and  
17 likewise, Mr. Dech, whether he, in fact, was with an  
18 interpreter and if the interpreter read the plea agreement  
19 verbatim.

20 I mean, again, I think it's my standard practice,  
21 I'd be very surprised if I deviated from it in this case,  
22 to confirm at the time of plea taking in a foreign language  
23 that the interpreter read the entire agreement, to have  
24 that confirmed by the defendant. I may have forgotten that  
25 part here, but I certainly would be very surprised at

1 myself if I did not ask that question of the interpreter  
2 and have the interpreter say yes. I think here also the  
3 contention is that she had difficulty (unintelligible)  
4 Spanish -- comprehending Spanish, it would be fair to find  
5 out before the government has rested, and, likewise, with  
6 Mr. Dech. So here we are, I'm just saying such is life. I  
7 gather the government, in effect, is going to rest upon its  
8 contentions, in essence, that the petition was untimely,  
9 and also simply on the transcript of the plea agreement --  
10 of the plea taking hearing to determine whether or not I,  
11 in fact, asked those questions; is that correct?

12 MS. RICE: Your Honor, if The Court decides not  
13 to allow supplemental briefing and time to order the change  
14 of plea transcript, that is correct, that it is untimely.

15 THE COURT: I will certainly let you, you know,  
16 supplement the record with a copy of that portion of the  
17 transcript. That's no problem at all.

18 MS. RICE: Thank you, Your Honor.

19 THE COURT: It's, although not transcribed, what  
20 happened is what happened, and it should be part of these  
21 proceedings, certainly that portion of it. So I don't know  
22 whether Angela or Tracy took that session. Angela, you  
23 probably don't have any recollection; is that correct?

24 THE COURT REPORTER: I do not, Judge. It should  
25 say on the docket.

1 THE COURT: Tina, can you take a --

2 MS. CAHOON: If it's The Court's intention to  
3 provide additional time so the record can be supplemented,  
4 then I think we would like to have supplemental briefing  
5 because you're asking that question --

6 THE COURT: Absolutely, by all means. I wouldn't  
7 give her the ability to write a brief and then say, sorry,  
8 pal, you're out of luck. Not at all.

9 MS. CAHOON: Never hurts to ask, right?

10 THE COURT: Of course not.

11 COURTROOM DEPUTY: Your Honor, the court reporter  
12 was Angela Nixon.

13 THE COURT: Okay, good. I know we've been having  
14 some problems retrieving transcripts from Tracy, through no  
15 fault of her own. So that's fine. Angela, it's probably  
16 that portion of the plea hearing -- you've been there with  
17 me often enough, probably ten minutes, if that, and so once  
18 you locate your recording or transcript, whatever it is,  
19 put into that little box, couple weeks to get that out,  
20 what's your -- what's your thought?

21 (A brief discussion was had off the record.)

22 THE COURT: The order will be entered accordingly  
23 that the court reporter shall obtain and prepare that  
24 portion of the plea taking hearing. Angela, is that good  
25 enough for you if there will simply be an order --

1           THE COURT REPORTER: Judge, I will need to have  
2   an order on the docket.

3           MS. RICE: I'll be sure to have that full  
4   transcript request and order in by tomorrow.

5           THE COURT: That's fine. No problem. So let's  
6   say a couple weeks for Angela to get that out, and then  
7   what about, what if I -- you file a supplemental brief by  
8   the end of the month, end of October?

9           MS. CAHOON: Matt, do you think that works for  
10   your schedule as well?

11          THE COURT: I was thinking maybe she file hers,  
12   you file yours. If you want, whatever you want. I mean,  
13   it is what it is. You'll have the transcript, you'll both  
14   be arguing the same thing. Quite candidly, I'm not sure it  
15   would be conclusive with the record because I suspect it's  
16   going to say what I said. Still doesn't get me -- what  
17   seems to me to be the core issue here is whether at the  
18   time her Spanish was sufficiently fluent to -- to  
19   understand Ms. Donohue or whoever else the interpreter was.  
20   I will also say, though, that if -- if the inter -- if the  
21   transcript shows that the interpreter, whoever it was, read  
22   the entire transcript in Spanish, that raises the real  
23   question about her credibility because I think she said  
24   pretty directly it was never read to her. And Mr. Dech  
25   showed her a few papers, and it was never read to her, and

1 I would infer that means in Spanish or otherwise. We will  
2 simply wait and see. Go ahead.

3 MS. CAHOON: I know that we'll make these  
4 arguments in post-hearing briefing, but I would be remiss  
5 to point out the mention of habeas in any standard plea  
6 agreement is very brief, no explanation of what it is, how  
7 it works, it's just you understand you're waiving a lot of  
8 your habeas arguments by pleading guilty. We rely on the  
9 defense lawyer to explain what all that means, but it's not  
10 actually in the language of the plea agreement.

11 THE COURT: I understand. On the other hand, it  
12 goes pretty directly to her credibility in terms of just  
13 generally. I mean, if she said it was never read to me and  
14 the interpreter said that she did, then I think it's, you  
15 know, a question of whether I believe her statement that it  
16 was never read to her in any language whatsoever, which, in  
17 turn, goes to, I think, her credibility about her failure  
18 to file a petition and so forth and so on. As I say,  
19 nobody's presented any evidence to the core issue, well,  
20 just how much Spanish does she really understand. And also  
21 what did Mr. Dech do, if anything, during the course of the  
22 discussion, and did he afterwards discuss with her her  
23 post -- post sentencing remedies, I don't know. But the  
24 record is the record. I take it as I find it. I'm just  
25 explaining I'm somewhat concerned that I will be dealing

1 with a very important question with incomplete evidence to  
2 reach a satisfactory -- a result that would satisfy me had  
3 I had a more complete record. But various burden -- I  
4 think it was the government's burden to come forward.  
5 That's the way it always happens. If you don't call the  
6 lawyer, the government calls the lawyer. In this case, not  
7 up to you to call the interpreter. Obviously you could  
8 have if you wanted to, but that's your choice. Here we  
9 are.

10 So in any event, let's do this, just to try to  
11 get the case decisional by mid November. Ms. Rice, why  
12 don't I give you until the 20th of October to submit your  
13 supplemental brief. Obviously if the delay in getting the  
14 transcript or other things get in your way, that's fine.  
15 Then Claire, I'll give you, let's say to the 15th of  
16 November. Obviously next day if that's -- next business  
17 day --

18 MS. CAHOON: Certainly, Your Honor.

19 THE COURT: I'll give -- Ms. Rice, I'll give you  
20 until the 15th to reply, okay. And the case will be  
21 submitted, and I will go from there. I will try --

22 MS. CAHOON: Your Honor, if The Court still would  
23 entertain -- I think Mr. Ahn has prepared some closing  
24 remarks, last we'll all be together live regarding our  
25 petition.

1           THE COURT: I'm not sure we have time. I think  
2 she's got to be -- it's my understanding she's under  
3 lockdown, and it's almost 4:00.

4           COURTROOM DEPUTY: The time was extended to 5:00.

5           THE COURT: It's only 3:30 -- 3:40. Okay. Let's  
6 go back, bring the interpreter and the petitioner back in,  
7 and then, Ms. Rice, you can respond in obviously as you see  
8 fit.

9           MS. RICE: Thank you, Your Honor.

10          MS. DYBALA: Okay, Judge, they are both  
11 available.

12          THE COURT: Okay. And we will now hear closing  
13 remarks. And I caution the lawyers, remember maybe at each  
14 few sentences to pause for the interpreter's convenience.  
15 And to the interpreter, obviously if they exceed your  
16 ability to recall and translate that for you, say so, and  
17 they will repeat it.

18          MS. CAHOON: Thank you, Your Honor.

19          MR. AHN: Thank you, Your Honor.

20          COURTROOM DEPUTY: Sorry, Matthew. Judge, can  
21 you get video consent also, please? I apologize.

22          THE COURT: Oh my goodness, yes. Thank you.  
23 Ms. Pedro Juan, you have a right -- I should have asked  
24 this question at the outset and I forgot. I apologize. I  
25 think the word in Spanish is disculpas, I think that's the

1 correct term. You have the right to have this hearing --  
2 to hold this hearing in a courtroom like the one you were  
3 in the last time we were together. And you can consent --  
4 however, you can agree to having the hearing conducted the  
5 way we've done today, that is by long distance, video  
6 conference. Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: And have you discussed whether to  
9 hold the hearing today in this way or to wait until it can  
10 be held in a courtroom with your attorneys?

11 THE DEFENDANT: Yes.

12 THE COURT: And was it your decision, after  
13 talking to them, to proceed with this hearing the way we  
14 have so far today?

15 THE DEFENDANT: Yes.

16 THE COURT: Was that decision motivated, in part,  
17 by the consideration that no one could be certain when we  
18 could have held the hearing in a courtroom?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. That would involve both when  
21 our courthouse would reopen, which now is scheduled for  
22 October 1st, whether or not it would stay open, we don't  
23 know. And finally, the problems of transporting you,  
24 problems with the Bureau of Prisons transporting you to the  
25 courthouse. Do you understand that?



1 THE DEFENDANT: Yes.

2 THE COURT: Is that's correct?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. And so you're perfectly  
5 satisfied with the fact that I've gone ahead and held the  
6 hearing, though I failed to get your prior agreement and  
7 consent before we started?

8 THE DEFENDANT: Yes.

9 THE COURT: Ms. -- Ms. Cahoon and Mr. Ahn, do you  
10 have any concern about the fact that I overlooked obtaining  
11 consent before we began the hearing rather than getting it  
12 toward the end?

13 MS. CAHOON: No, Your Honor. Our client has  
14 indicated we reviewed those options with her, and we  
15 believe she was fully aware of them.

16 THE COURT: Ms. Rice, any -- I apologize. And  
17 likewise, does the government have any concern or objection  
18 with regard to the fact that I neglected to obtain the  
19 defendant's consent to proceeding by way of Zoom at the  
20 outset of the hearing?

21 MS. RICE: No, Your Honor.

22 THE COURT: Okay. Thank you, Tina. Okay.

23 Mr. Ahn, now you may proceed.

24 MR. AHN: Thank you, Your Honor.

25 THE COURT: Good afternoon.

1 MR. AHN: The questions before this Court are  
2 sequential and straight forward. There are three of them.

3 First, was Ms. Pedro Juan reasonably diligent in  
4 pursuing this motion such that the timing of her filing  
5 should be deemed acceptable.

6 The second and third questions regard the two  
7 Strickland factors. And since we have briefed those issues  
8 fully, we anticipate additional briefing, I will keep my  
9 comments focused on equitable tolling.

10 The standard for equitable tolling, as clarified  
11 in our reply, was created by Holland V Florida in 2010 and  
12 requires two things. First, that Ms. Pedro Juan was  
13 exercising reasonable diligence in pursuing her rights; and  
14 second, that some extraordinary circumstance stood in her  
15 way and prevented that timely filing. Ms. Pedro Juan is  
16 not required to have exercised maximum feasible diligence,  
17 just reasonable diligence. In Ms. Pedro Juan's testimony  
18 today, she stated that she had no English skills during the  
19 pendency of her case and had relatively limited Spanish  
20 skills during the pendency of her case.

21 THE COURT: Let me say -- excuse me, I credit the  
22 first portion of that testimony relative to her English  
23 speaking skills. She came into this country -- go ahead.  
24 I may not remember accurately, but I believe she came into  
25 this country at about age 18, and I believe that at the

1 time of her arrest she was about 21. I may be off a little  
2 bit. And while she was here, I'm willing to assume, absent  
3 something in the record to the contrary, that whether  
4 Mr. Serrano was with her, or whether it was during the  
5 period he was not with her, that she was communicating  
6 primarily with the victims of this human trafficking  
7 endeavor in hers and perhaps their own native tongue,  
8 either Spanish or the dialect thereof. And as I say,  
9 absent some record to the contrary, I would -- evidence in  
10 the record to the contrary, conclude from those facts that  
11 her English ability is probably quite limited, as she's  
12 testified to when she came, and that they remained  
13 essentially equally so limited, or substantially so, prior  
14 to her arrest and at the time of trial and sentencing. And  
15 the that issue of her ability to comprehend and communicate  
16 in Spanish remain, I think, at issue in this case. And I  
17 presently have no desires, I've expressed my view on that,  
18 credibility of her testimony in that regard. I do have  
19 some doubts, but I'll let the two of you object -- excuse  
20 me, the two of you argue in response in the supplemental  
21 briefing with regard to the doubts that I do have about her  
22 testimony in that regard. And so I read -- until I see  
23 what happened once we have a transcript from Angela, until  
24 I read what you fight about, I'll leave that question open.

25 Finally, it does occur to me since we are

1 expanding the record based on the transcript of the  
2 proceedings before me, unless there's an objection, which I  
3 will hear you argue right now, I think it would be  
4 appropriate to obtain a copy of the transcript -- we're  
5 going to get the transcript, but for me to limit my review  
6 of it to, both the plea taking hearing and the sentencing  
7 because, again, it is my custom and practice, and, again, I  
8 may not have followed it in this case and at that time, but  
9 it's my custom and practice that a non-English speaking  
10 defendant to ask at the outset whether that defendant has  
11 read the Presentence Report and comprehended it, and with a  
12 nonspeaking defendant to ask whether it was translated from  
13 whatever language I understand that the defendant speaks,  
14 into that language, and then were there any questions she  
15 may have had, et cetera, is translated back into English.

16 And to back up to the beginning, as it were, on  
17 the same general issue, it is my practice, and I would be  
18 surprised if I didn't follow it here, to take the time and  
19 do so quite slowly, and I believe clearly, say to the  
20 defendant that if at any time you do not understand  
21 something, say so, and you will have ample opportunity, the  
22 opportunity to get it clarified. I may have varied the  
23 phraseology, but, again, I would be astonished and  
24 disappointed in myself if I did not, at the outset of the  
25 plea hearing, say if you don't understand something, say

1 so. And though it may be of less significance relative to  
2 this hearing and allegations, it's also my unbearing  
3 practice to say if at any time you want to talk to your  
4 attorney, say so. And I have no recollection, though the  
5 transcript will show, of Ms. Pedro Juan ever indicating any  
6 of the -- during any time of the proceedings that she did  
7 not understand what was going on. And that nor, according  
8 to my recollection because this event's several years ago,  
9 did she ask to speak to her attorney.

10 And I'll be very candid with you, if I said that,  
11 it would be a little hard to credit the suggestion that a  
12 person who's partially, 60 percent or so, fluent in Spanish  
13 would not understand if you do not understand something,  
14 say so. That is not a complicated legal statement.

15 On the other hand, quite candidly, the issue of  
16 credibility as to the allegations of what happened to this  
17 woman after she got into this country also bear upon this  
18 case because were I to credit the allegations that she made  
19 about the attorney in Columbus, which, unfortunately, no  
20 record exists one way or another, through no fault of  
21 anybody, regard -- and regardless of any concerns I may  
22 have about her ability to comprehend and communicate in  
23 Spanish, at the very least, that aspect of her claim for  
24 relief, likewise, raises substantial issues to credibility.  
25 Because if I -- because if I credit that testimony, it's

1 clear that there was no evidence presented in that regard  
2 in mitigation, and I have no evidence one way or the other  
3 that, through an interpreter or otherwise, she called those  
4 allegations to Mr. Dech's attention. And once again, I'm  
5 confronted with the problem of the very important issue  
6 needing for me to address it, based solely upon the record  
7 of the plea taking hearing and perhaps the sentencing  
8 hearing, and -- and also -- excuse me -- and also as  
9 supplemented by the evidence that she has subsequently  
10 submitted -- excuse me -- the evidence that she has  
11 subsequently submitted --

12 MS. CAHOON: Your Honor, if I may, I think the --

13 THE COURT: If I may, I still have to complete --

14 MS. CAHOON: My apologies.

15 THE COURT: It does seem to me that I'm calling  
16 those concerns to your attention because I want you to take  
17 them into consideration in the supplemental brief. And I  
18 think, Ms. Cahoon and Ms. Rice, you're familiar with my  
19 practice, I try to -- from sentencing I try to let people  
20 know what's on my mind. Usually, of course, it's at the  
21 outset of sentencing, or along the way, what I'm thinking  
22 about in terms of sentence. And that's what I'm trying to  
23 do now at the conclusion of this hearing while these  
24 thoughts occur to me are fresh on my mind, and that you  
25 both can address them in your supplemental briefing. And

1 again, as I think you've heard me say, I don't know whether  
2 Ms. Rice has, I believe you've heard me say, I'd rather  
3 give you the opportunity to shoot at a sitting target  
4 than -- than in the general direction of somebody who's  
5 hiding, as it were, behind the black robe.

6 That being said, Ms. Cahoon, does that speak to  
7 whatever it was you were about to say? And if not, that's  
8 fine.

9 MS. CAHOON: Partially, Your Honor. I do want to  
10 make a clarification for the record before we wrap this up.

11 THE COURT: Sure.

12 MS. CAHOON: I believe The Court stated it was  
13 considering limiting its review to the plea transcript and  
14 the sentencing transcript moving forward to resolution --

15 THE COURT: Well, whatever other evidence is in  
16 the record -- of record now. I mean, again, I can't recall  
17 whether I have an affidavit from Mr. Dech or --

18 MS. CAHOON: You do, Your Honor.

19 THE COURT: I would assume so.

20 MS. CAHOON: I simply want to say, for the sake  
21 of the record, that it's our position, I'm sure it will be  
22 (unintelligible) as well that the plea  
23 agreement (unintelligible) --

24 THE COURT REPORTER: Claire -- Claire, I'm not  
25 hearing you very well. You're fading in and out.

1 MS. CAHOON: I'm sorry, Angela --

2 THE COURT: Just for future reference, I've had  
3 the same problem. Angela's had the same problem with me,  
4 that's why I wear the ear buds. So you might give some  
5 thought to that. Let's let the translator translate that.

6 MS. CAHOON: I simply want to provide for the  
7 record, the only reason we've been talking about the plea  
8 agreement at all is because it goes to whether or not  
9 Ms. Pedro Juan understood her habeas right.

10 THE COURT: You're fading, whether or not  
11 Ms. Pedro Juan understood --

12 MS. CAHOON: Understood her habeas rights at the  
13 time that she was sentenced. This is not a case in which  
14 we are in some way challenging her plea. And so while the  
15 change of plea hearing will give us some insight, it will  
16 not address what explanation Mr. Dech says, if any, about  
17 the nature of that plea.

18 THE COURT: I understand that. There's no record  
19 of that except what may be in the transcript, and I doubt  
20 whether there's any -- and I understand that, but it seems  
21 to me -- excuse me. I'm sorry, Ms. Cahoon. Go ahead. I  
22 promise this is the last thing I will say. The only -- and  
23 I interrupted. I have something on my mind. But that also  
24 leaves open her credibility as to the abuse -- the sexual  
25 abuse and other abuse that she received from the Columbus



1 attorney, and also the indifference exhibited, manifested  
2 by the Columbus Police Department, which, by the way,  
3 appears to be correct because there's no record of it. But  
4 on the other hand, also goes to the credibility of whether  
5 or not she, in fact, made such a complaint. And that --  
6 and because, as I understand your petition, the timing  
7 issue is one thing, then we get to the issue of mitigation.  
8 And -- and, you know, and the record is as it is with  
9 regard to that, but I do think threshold issue with regard  
10 to that is her credibility, whether those events occurred,  
11 and then obviously if they occurred and I credit that, then  
12 I credit, I assume that she tried to go to the police and  
13 they did nothing, and, for whatever reason, Mr. Dech didn't  
14 find out about it. And all I had was the -- go ahead.

15 MS. CAHOON: Well, I do want to clarify based on  
16 The Court's comments that Mr. Dech acknowledges --

17 THE COURT REPORTER: Claire, I only got 2/3 of  
18 that. I can't hear you.

19 MS. CAHOON: I'm sorry, Angela. There's not much  
20 I can do.

21 THE COURT: Mr. Dech does acknowledge, you are  
22 correct now that you recall to my mind his affidavit and  
23 that he does acknowledge that -- go ahead. Complete your  
24 sentence.

25 MS. CAHOON: I was simply saying, to clarify,

1 Mr. Dech does acknowledge that Ms. Pedro shared her  
2 horrible experiences of sexual assault, which is part of  
3 our argument of ineffective assistance of counsel, to bring  
4 it to The Court's attention.

5 THE COURT: Candidly -- go ahead. Let her  
6 translate that.

7 MS. CAHOON: To circle back with a final remark  
8 as to credibility.

9 THE COURT: Okay. And if I can say that's --  
10 that's an important point that you make in response to what  
11 I was just saying.

12 MS. CAHOON: Thank you, Your Honor. Ms. Pedro  
13 Juan's testimony today was that parts of the plea agreement  
14 were read to her during her meetings with Mr. Dech. She  
15 did not say -- she did not testify that that agreement was  
16 not read to her at all. And so if the record reflects that  
17 at the change of plea hearing she indicated that it was  
18 read to her, it would be defense position and our argument  
19 that it would not --

20 THE COURT: You're fading out a bit. If the  
21 record reflects --

22 MS. CAHOON: If the record reflects that at the  
23 change of plea hearing that she did indicate to The Court  
24 that, yes, that agreement was read to her, it's our  
25 argument that that would not reflect poorly on her

1 credibility.

2 THE COURT: But again -- all I'm saying is hold  
3 your fire on that. You know, let's proceed with your  
4 remarks that were prepared by Mr. Ahn. And I, by no  
5 means -- let me back up. It's the purpose of my making  
6 those remarks is to make clear that you have the  
7 opportunity in the final briefing to address them. Okay.  
8 Does that answer your concern?

9 MS. CAHOON: It does. Thank you, Your Honor.

10 THE COURT: I would never cut -- cut you off and  
11 say that's it -- I was trying to make clear that I have  
12 questions about credibility, and I think they need to be  
13 addressed as part of the supplemental briefing. And in  
14 fact, I want them to be addressed, okay.

15 Okay, Mr. Ahn?

16 MR. AHN: Your Honor, I think in the process of  
17 discussing your remarks, I think that Ms. Cahoon has  
18 largely covered what I wish to say, and thus we will wait  
19 for supplemental briefing.

20 THE COURT: Okay. And again, you're welcome to  
21 repeat that. I would prefer that both parties basically  
22 give me a complete brief rather than my having to flip to  
23 one, flip back to try to see where they blend and so forth.  
24 Okay.

25 Okay. Ms. Rice, anything further on your behalf?

1 MS. RICE: Thank you, Your Honor. I'll save the  
2 majority for the supplemental briefing, but I do want to  
3 clarify the record with respect to Mr. Dech's statements at  
4 sentencing. And that is that Mr. Dech did advise The Court  
5 of Ms. Pedro Juan's victim status, and that information was  
6 set forth in the presentence investigation report.

7 THE COURT: And that -- I recall that now, and  
8 that simply, seems to me, the question, well, under all the  
9 circumstances, was that sufficient to present an  
10 adequate -- Constitutionally adequate presentation,  
11 mitigation, I think that's what the defendant's contention  
12 was, that it was not.

13 MS. RICE: Correct, Your Honor.

14 THE COURT: Okay. Go ahead, Ms. Rice.

15 MS. RICE: And Your Honor I will save it for the  
16 supplemental briefing why Mr. Dech's performance was not  
17 inefficient and why the second prong of Strickland is not  
18 satisfied.

19 THE COURT: And I think, Ms. Rice, you had one  
20 extra use of the word not. I think you said will save for  
21 supplemental briefing why Mr. Dech's performance was not  
22 sufficient, if that's what you said, or that's what I heard  
23 in any event, that's not what you meant?

24 UNIDENTIFIED SPEAKER: Excuse me one minute.  
25 We've got to take her out here for count.

1 THE COURT: I'm all set. Give me maybe about 30  
2 seconds. Go ahead.

3 MS. DYBALA: Judge, they did take her to count  
4 her.

5 THE COURT: Oh, to count her.

6 MS. DYBALA: She'll be back momentarily.

7 THE COURT: And I really do think it will take 30  
8 seconds to say nothing further, that concludes this  
9 proceeding.

10 MS. DYBALA: Okay, Judge. She is back.

11 THE COURT: Okay --

12 MS. RICE: Your Honor.

13 THE COURT: Ms. Pedro Juan, you back with us?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Ms. Rice?

16 MS. RICE: Thank you, Your Honor. For the  
17 record, I meant to say was not deficient with respect to  
18 Mr. Dech. Thank you.

19 THE COURT: I understood what you meant  
20 obviously, but I just didn't want any ambiguity in the  
21 record so the context of this whole proceeding would be  
22 clear even if you misspoke and/or I misheard.

23 MS. RICE: And finally, Your Honor, just on a  
24 housekeeping note, I forgot, I have to get our budget  
25 approved before I can submit the transcript request, so it

1     may be a couple of days.

2               THE COURT:  No problem.  And if -- if delaying  
3     getting it approved or Angela being able to get it to you  
4     causes a problems for you, then whenever you do file your  
5     supplemental brief, the time for the reply will be extended  
6     accordingly.  And, likewise, for you, Ms. Cahoon, Mr. Ahn,  
7     okay.

8               Let me speak with Ms. Pedro Juan for a moment,  
9     please.  Ms. Pedro Juan, can you say something, please, so  
10    I can see her.  I want to be speaking to her directly  
11    rather than at you.  Just a couple of words.

12              THE DEFENDANT:  Okay.  I'm understanding  
13    everything okay.

14              THE COURT:  Okay.  I just want to say to you, I  
15    know how important this is to you, and I will do my best to  
16    get a decision out promptly.  And again --

17              THE DEFENDANT:  Thank you.

18              THE COURT:  -- and just so you understand, in  
19    this proceeding that if I rule against you, you have a  
20    right to appeal.  Do you understand that?

21              THE DEFENDANT:  Yes.

22              THE COURT:  Okay.  And that you will continue to  
23    have Ms. Cahoon and Mr. Ahn as your attorneys if you want  
24    to have them.  If not, other counsel can be appointed for  
25    you.  But in any event, you can prosecute that appeal, you

1 can maintain that appeal without cost to yourself. And  
2 likewise -- and likewise, whatever the cost for the  
3 transcript or whatever the cost of putting the record  
4 together for you may be, it will be -- the record that the  
5 Court of Appeals will consider, the transcript of these  
6 proceedings, that cost will be borne by the United States  
7 Government without cost to yourself. Do you understand  
8 that?

9 THE DEFENDANT: Yes.

10 THE COURT: Anything further for the petitioner,  
11 Ms. Cahoon, Mr. Ahn, anything further for you?

12 MS. CAHOON: Nothing additional, Your Honor.  
13 Thank you.

14 THE COURT: Okay. Ms. Rice, anything further for  
15 the government?

16 MS. RICE: No, Your Honor. Thank you.

17 THE COURT: I just want to -- and I promised the  
18 interpreter that after I complete what I say to you now, I  
19 won't be interrupting you during this proceeding any  
20 further. Okay. I just want to thank you for your  
21 services. Greatly appreciate it. Go ahead.

22 INTERPRETOR: Your Honor, it's the interpreter's  
23 pleasure to interpret for The Court.

24 THE COURT: Why don't you interpret that because  
25 I do have one final thing to say to you. I've been in

1 sessions where simultaneous translation has occurred, and  
2 it's my recollection that the translators would switch  
3 every 20 minutes or so simply because of the exhaustion  
4 that would set in with the difficulty of, you know -- that  
5 was simultaneous translation, which this has not been, but  
6 I understand the difficulty of translation in any event.  
7 So thank you very much. Gracias. Mucho gracias. Thank  
8 you very much. That will conclude this proceeding. Thank  
9 you. Do you want to talk to your client at all for a few  
10 minutes? You're welcome to do so.

11 MS. CAHOON: Is it easy to send us to the  
12 breakout room?

13 THE COURT: You'll want the interpreter. And  
14 Ms. Unis, go to breakout room -- or Ms. Rice, excuse me,  
15 can both sign off, and then you'll be -- and Tina can --

16 MS. DYBALA: I'll put them in a breakout room.

17 MS. CAHOON: Thank you, Your Honor.

18 THE COURT: Take whatever time you want. I'm  
19 going to log off. Thank you, folks.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

s:/Angela D. Nixon                      October 9, 2020

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Angela D. Nixon, RMR, CRR              Date